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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

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5
6 SHANA LEE MCCART-POLLACK,

7 Plaintiffs,

8 vs.

9 ON DEMAND DIRECT RESPONSE LLC, *et al.*,

10 Defendants.

2:20-cv-01624-GMN-VCF

ORDER

11 Before the Court is Plaintiff's Motion for Craig Shandler to be Deemed Served (ECF No. 40).
12 Plaintiff is requesting service by alternative means on Craig Shandler. The court will construe this as a
13 motion for service by publication.

14 **Service By Publication**

15 Pursuant to Fed. R. Civ. P. 4(e)(1), "an individual – other than a minor, an incompetent person, or
16 a person whose waiver had been filed – may be served in a judicial district of the United States by
17 following state law for serving a summons in an action brought in courts of general jurisdiction in the state
18 where the district court is located or where service is made." Under Rule 4(e)(1) of the Nevada Rules of
19 Civil Procedure, "when the person on whom service is to be made resides out of the state, or has departed
20 from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid
21 the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge
22 thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action
23 exists against the defendant in respect to whom the service is to be made, and that the defendant is a
24 necessary or proper party to the action, such court or judge may grant an order that the service be made
25 by the publication of summons."

1 Plaintiff asserts that after diligent effort, she is unable to serve Craig Shandler. In support of this
2 assertion, Plaintiff provided the court with the Affidavit of Due Diligence. (ECF No. 41 at p. 4).

3 The process servers have attempted service on October 28, 2020 but were unsuccessful. *Id* at p.
4 5.

5 The court finds that pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1), permitting
6 service by publication of the Summons and Amended Complaint is warranted on Craig Shandler.

7 Under Federal Rule of Civil Procedure 4(e), a plaintiff may serve an individual in the United States
8 using any method permitted by the law of the state in which the district court is located or in which service
9 is affected. Fed. R. Civ. P. 4(e)(1). Here, Plaintiff states that Craig Shandler's last known address is in
10 California and records indicate that he still resides at 4080 Old Topanga Canyon Rd., Calabasas, CA
11 91302.

12 California law allows for five basic methods of service: (1) personal delivery to the party, *see* Cal.
13 Civ. Proc. Code § 415.10; (2) delivery to someone else at the party's usual residence or place of business
14 with mailing after (known as "substitute service"), *see id.* § 415.20; (3) service by mail with
15 acknowledgment of receipt, *see id.* § 415.30; (4) service on persons outside the state by certified or
16 registered mail with a return receipt requested, *see id.* § 415.40; and (5) service by publication, *see id.* §
17 415.50.

18 The Court GRANTS Plaintiff's motion. Publication of notice is to be conducted in a manner
19 consistent with California Code of Civil Procedure § 415.50 and California Government Code § 6064 by
20 publishing the summons in a newspaper, published in the State of California, once per week for four
21 consecutive weeks. Plaintiff must also mail with acknowledgment of receipt, a copy of the Summons and
22 Amended Complaint to Craig Shandler at his last known address.

1 **Extension For Service**

2 Fed. R. Civ. P. 4(m) requires a defendant to be served within 90 days after the complaint is filed.
3 If “the plaintiff shows good cause for the failure [to serve a defendant within that time-frame], the court
4 must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m).

5 Given that Plaintiff has demonstrated “good cause” for her failure to effectuate service, the court
6 will extend the 4(m) deadline, up to and including June 1, 2021. *See* Fed. R. Civ. P. 4(m).

7 Accordingly, and for good cause shown,

8 IT IS HEREBY ORDERED that Plaintiff’s Motion for Craig Shandler to be Deemed Served (ECF
9 No. 40) is GRANTED.

10 IT IS FURTHER ORDERED that Plaintiff is permitted to serve Craig Shandler by publication. A
11 copy of the summons and amended complaint must be mailed to Craig Shandler at his last known address
12 by certified U.S. Mail, return receipt requested.

13 IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 4(e)(1), California Code of Civil
14 Procedure section 415.50, and California Government Code section 6064, the Summons on Craig
15 Shandler in this action must be served by publication in a newspaper, published in the state of California,
16 must be once a week for four successive weeks. Four publications in a newspaper regularly published
17 once a week or oftener, with at least five days intervening between the respective publication dates not
18 counting such publication dates, are sufficient. The period of notice commences with the first day of
19 publication and terminates at the end of the twenty-eighth day, including therein the first day.

20 IT IS FURTHER ORDERED that the deadline to effect service of process is extended up to and
21 including June 1, 2021 for Defendant Craig Shandler.

22 DATED this 3rd day of March, 2021.

23 
24 CAM FERENBACH
25 UNITED STATES MAGISTRATE JUDGE